

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

THOMAS E. SCHERER,

Plaintiff,

v.

**MERCK & CO., DAVID R. BARRY/
UNITED STATES OF AMERICA, and
STATE OF KANSAS,**

Defendants.

No. 05-2019-CM

MEMORANDUM AND ORDER

Plaintiff Thomas E. Scherer brought this *pro se* action against defendants Merck & Co., David R. Barry/United States of America, and the State of Kansas. This action is before the court on plaintiff's *pro se* filing, titled "Motion to Dismiss Michael J. Gunter" (Doc. 242).

Although plaintiff filed this action *pro se*, Michael J. Gunter filed an Entry of Appearance on behalf of plaintiff (Doc. 239) on September 24, 2007. After that filing, plaintiff, acting *pro se*, signed and filed a Stipulation of Dismissal (Doc. 241) and the present filing (Doc. 242).

Following the Tenth Circuit, this court does not accept *pro se* filings from parties that are represented by counsel. *United States v. Hildreth*, 485 F.3d 1120, 1125 (10th Cir. 2007) (citing *United States v. Pearl*, 324 F.3d 1210, 1216 (10th Cir. 2003); *United States v. McDermott*, 64 F.3d 1448, 1450 n.1 (10th Cir. 1995); *United States v. Guadalupe*, 979 F.2d 790, 795 (10th Cir. 1992)). Consequently, plaintiff's present *pro se* filing must be denied as moot.

If plaintiff wishes to resume representing himself *pro se*, then plaintiff should contact his counsel in this case about whether it would be appropriate for counsel to file a motion to withdraw

as counsel. If plaintiff and his counsel determine that such a motion is appropriate and the motion is filed by counsel, plaintiff could then represent himself by filing a stipulation of dismissal or taking other appropriate action in this case. If plaintiff and his counsel are not able to resolve whether a motion to withdraw is appropriate, counsel should so notify this court.

IT IS THEREFORE ORDERED that plaintiff's *pro se* filing (Doc. 242) is denied as moot.

Dated this 22nd day of October 2007, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge